



**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, DC**

Issued by the Department of Transportation on January 9, 2004

NOTICE OF ACTION TAKEN -- DOCKET OST-2002-14049

This serves as notice to the public of the action described below, taken by the Department official indicated (no additional confirming order will be issued in this matter).

Applications and/or Requests of **Federal Express Corporation (FedEx)** filed December 9, 2003, and supplemented December 15, 2003; **Northwest Airlines, Inc. (Northwest)** filed December 9, 2003 and supplemented December 15, 2003; **Polar Air Cargo, Inc. (Polar)** filed December 10, 2003, and supplemented December 15, 2003; **United Parcel Service Co. (UPS)** filed December 15, 2003, for:

Interim use of fifth-freedom frequencies for service in the Seoul-Hong Kong market.

By Notice of Action Taken, in the above referenced docket, on December 10, 2003, the Department granted Evergreen International Airlines (Evergreen) and Kalitta Air, LLC (Kalitta) waivers from the startup dates for their combined four fifth-freedom frequencies allocated for Seoul-Hong Kong Service.¹ That Notice also permitted Federal Express Corporation (FedEx) to continue using its existing two *pendente lite* frequencies for Seoul-Hong Kong service through March 10, 2004, and stated that we would issue a Notice regarding use of the remaining two frequencies soon, noting that Northwest, FedEx, and Polar had expressed interest in using the frequencies. On December 11, 2003, the Department issued a procedural notice regarding the remaining two frequencies.²

FedEx seeks two additional frequencies; Northwest seeks one frequency; Polar seeks two frequencies to supplement its existing long-term frequencies in the market; and UPS seeks two frequencies. Each carrier acknowledges that it operates in the market now on a blind-sector basis; that it can immediately begin using the interim frequencies; and that grant of additional authority would enhance its operations and would improve its competitive position.

Northwest, Polar, and UPS filed answers, opposing the applications of the other applicants. Northwest and Polar filed consolidated replies.

Northwest argues that Polar should not be granted frequencies while Northwest has no access to the local market; that FedEx should not be permitted to monopolize the available temporary frequencies; that UPS operates daily Hong Kong-Seoul service while Northwest operates a single weekly Hong Kong-Seoul flight; and that UPS controls the second-most Hong Kong fifth-freedom frequencies after Federal Express.

Polar argues that FedEx and UPS can already offer services between Seoul and Hong Kong via their hubs in the Philippines and that an award to either carrier would only serve to supplement that service via the Philippine hubs. It argues that FedEx and Northwest would use the frequencies to support only one-way operations. Polar maintains that it will use the frequencies to operate between Seoul and Hong Kong on a round-trip basis and notes that Seoul is a hub for its operations.

¹Evergreen's waiver from the startup condition for the first-year frequency is effective through March 10, 2004; Evergreen's waiver from the startup condition for the second-year frequency is effective through April 23, 2004, or until the date on which Evergreen begins service with each of these frequencies, whichever occurs earlier. Kalitta's waiver from the startup for both frequencies is effective through March 10, 2004, or until the date on which Kalitta begins service with each of these frequencies, whichever is earlier.

² The December 11 Notice invited any other carrier parties to the *2002/2003 Hong Kong Fifth-Freedom All-Cargo Frequency Proceeding* willing and able promptly to implement service on an interim basis with one or both of the available fifth-freedom frequencies to file an application by noon December 15, 2003. The Notice directed that comments on all requests and applications should be filed by noon December 17 and any replies should be filed by noon December 18, 2003.

UPS argues that it would maximize U.S. carrier service by being a third carrier in the market that can provide general air freight. It argues that of the applicants, it is the only one that operates Hong Kong-Seoul routing on a round-trip basis and maintains that an award to any other applicant will waste half of the instant authorization.

Applicant rep: **G. Bailey Leopard, Jr. (FedEx) (901)434-6664; Megan Rae Rosia (Northwest) (202)842-3193; Jeffrey N. Manley (Polar) (202) 663-6670; and David L. Vaughan (UPS) (202)955-9864**

DOT analyst: **Linda Senese, (202)366-2367**

DISPOSITION

XX Granted: one frequency to Northwest and one frequency to Polar (see Remarks below)

Each allocated frequency is effective: January 9, 2004, through March 10, 2004.

XX Denied: Balance of requests (See Remarks below)

**Action taken by: Susan McDermott
Deputy Assistant Secretary for
Aviation and International Affairs**

Remarks: The matter before the Department involves immediate replacement for interim authority for two Hong Kong-Seoul fifth-freedom frequencies. Our focus here is thus much narrower than it would be in a proceeding where we were deciding selections and allocations for the long term. Here, we are seeking a temporary solution for a specific problem—*i.e.*, that two carriers we selected in the long-term proceeding have not yet begun service and might not do so for a period of some weeks. Thus, the type of service that we anticipated would be present in the market by this time is not yet available to the public. Our goal is to provide, to the extent possible, comparable public benefit during this interim period.

Against this background, we have decided to award one frequency each to Northwest and Polar through March 10, 2004.³ We will thereby be awarding authority to two carriers whose cargo operations concentrate on the type of cargo service—*i.e.*, general all-cargo services—that most closely corresponds to that of the long-term award holders, Kalitta and Evergreen, whose entry has been delayed. We will also, by awarding this interim authority to two different carriers in addition to our earlier award of two interim frequencies to FedEx, be adding to shipper options and promoting competition. In the circumstances presented, we have determined that this result best serves the public interest.

Since we expect Kalitta and Evergreen to be in a position to begin services to Seoul on or before March 10, 2004, we will require them to inform the Department, Northwest, and Polar at least two weeks prior to their inaugurating service so that Northwest and Polar can take down their services in a timely fashion.

We found that our action was consistent with Department policy; and grant of the waiver was consistent with the public interest. To the extent not granted, we denied all requests in the referenced Docket. We may amend, modify, or revoke the authority granted in this Notice at any time without hearing at our discretion.

*An electronic version of this document is available on the World Wide Web at:
http://dms.dot.gov/reports/reports_aviation.asp*

³ We recognize that Evergreen has received a startup waiver for one of its frequencies through April 23, 2004. Evergreen is under an obligation to report periodically on its progress on inaugurating services. Should it appear that this one frequency will in fact remain available after March 10, 2004, we will address the matter of its interim use at a later date.